

NEW JERSEY REGISTER
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MONDAY, MAY 16, 2005
RULE PROPOSAL
LABOR
DIVISION OF WAGE AND HOUR COMPLIANCE
PUBLIC WORKS CONTRACTOR REGISTRATION

Proposed Readoption with Amendments: N.J.A.C. 12:62

Authorized By: Thomas D. Carver, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:11-56.48 et seq. (P.L. 1999, c.238).
Calendar Reference: See Summary below for explanation of exception to calendar requirement.
Proposal Number: PRN 2005-185.

A public hearing on the proposed readoption with amendments will be held on the following date at the following location:

Friday, June 3, 2005

10:00 A.M. to 12:00 noon

New Jersey Department of Labor and Workforce Development

John Fitch Plaza

13th Floor Auditorium

Trenton, New Jersey 08625

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by July 15, 2005 to:

Frederick S. Cohen, Regulatory Officer

Office of Regulatory Services

New Jersey Department of Labor and Workforce Development

PO Box 110, 13th Floor, Suite G

Trenton, New Jersey 08625-0110

Fax: (609) 292-8246

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 12:62, rules governing Public Works Contractor Registration, is scheduled to expire on October 14, 2005. The

Department of Labor and Workforce Development has reviewed these rules and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated with substantive amendments. By way of an historical perspective, the Department had hitherto sought to amend the Public Works Contractor Registration regulations by way of a proposal which appeared in the New Jersey Register of August 16, 2004 at 36 N.J.R. 3650(a). At that time, the Department conducted an on-going review of its enforcement responsibilities under the New Jersey Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., and the rules promulgated thereunder, N.J.A.C. 12:62. As a result, it had concluded that N.J.A.C. 12:62-2.4(a) 5 required amendment. That paragraph, which relates to the denial, suspension, or revocation of a contractor's public works registration certificate, provides that a contractor can be so penalized if he or she contracted for use in the completion of a public work any subcontractor or independent contractor required to register under the Act who is not so registered. In order to properly fulfill its enforcement obligations as assigned to it under the Act by the Legislature, and in order to further prevent persons from violating the intent thereof, the Department proposed to amend N.J.A.C. 12:62-2.4(a)5 so that a contractor could face a suspension or revocation of his or her contractor registration certificate or the denial of the renewal thereof if he or she has:

"Contracted for use in the completion of a public work any subcontractor or independent contractor required to register under the Act who is not so registered or has utilized a subcontractor who has subcontracted his or her work to any subcontractor or independent contractor who is not so registered."

Moreover, in the course of its normative administration of the Public Works Contractor Registration Act, the Department had further determined that N.J.A.C. 12:62-2.4(c) required amendment. Specifically, the subsection requires the incorporation therein of a set of criteria which the Department will consider in imposing a term of suspension or revocation. By so doing, the Department will formalize the use and application of standardized criteria heretofore non-regulatorily referenced before a contractor's registration certificate is either suspended or revoked. By further clarifying N.J.A.C. 12:62-2.4, those persons subject to the provisions thereof will have a clear understanding of the process whereby the Department will reach its determination as to the severity, or leniency, of the sanction imposed for violation of the provisions of the New Jersey Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., and the rules promulgated thereunder.

Thus, N.J.A.C. 12:62-2.4(c), as proposed at 36 N.J.R. 3651, will note that, in determining the length of time for which a contractor's registration certificate may be revoked or suspended, the following criteria shall be considered:

1. The record of previous violations by the contractor of the Public Works Contractor Registration Act and/or the New Jersey Prevailing Wage Act;
2. Whether the general contractor or subcontractor in question should reasonably have known that a subcontractor with whom he or she is in privity had not registered, pursuant to the Act or had had his or her registration revoked or suspended or had let his or her registration lapse;
3. The total number of unregistered subcontractors at the work site(s) in question and the size and scope of the public works project(s); and
4. Whether the general contractor or subcontractor in privity to the subcontractor who is not registered pursuant to the Act obeyed the Department's directive to remove the unregistered subcontractor or independent contractor from the work site and thus cured the violation of the Act.

The Department was, and continues to be, of the belief that it is in the best

interests of all parties that the foregoing proposed amendment be incorporated into N.J.A.C. 12:62. A public hearing on the proposed amendments was held on September 24, 2004, while written comments were received through October 15, 2004. Subsequent to the public hearing at which no comments were offered, four written comments were received by the Department. They came from Tom DiGangi of the Building Contractors Association of New Jersey, Richard Forman of the New Jersey Asphalt Pavement Association, Robert Brown of the American Asphalt Company, Inc. and Robert Briant, Jr., of the Utility and Transportation Contractors Association of New Jersey. All four stated their opposition to the proposed amendments. In particular, the latter gentlemen contended that owner-operators of trucks are not subcontractors subject to the terms of the Public Works Contractor Registration Act. The Department disagrees with that contention noting that the issue of defining an individual as an "independent contractor" is circumstance sensitive. Thus, N.J.A.C. 12:56-16.1 provides that "[t]he criteria identified in the Unemployment Compensation Law at N.J.S.A. 43:21-19(i)(6)(A)(B)(C) and interpreting case law will be used to determine whether an individual is an employee or independent contractor for purposes of the Wage and Hour Law." It is clear that N.J.S.A. 43:21-19(i)(A) defines "employment" as ". . . service performed . . . for remuneration or under any contract of hire, written or oral, express or implied." Once remuneration is established, the burden is on the employer to demonstrate that the individuals who were compensated are independent contractors as defined by the statutory ABC Test. In addition, all three conditions of the ABC Test must co-exist or the resulting relationship is one of statutorily covered employment. See, *William H. Goldberg & Co. v. Div. Of Employ. Sec.*, 21 N.J. 107, 179 (App. Div. 1961); *Electrolux Corp. v. Board of Review*, 129 N.J.L. 157, 159 (E & A. 1942). The individual claiming to be an independent contractor, moreover, must satisfy the ABC Test by a clear preponderance of the evidence. *Re Polk Revocation*, 90 N.J. 550, 560 (1982). Moreover, in *Carpet Remnant Warehouse v. Department of Labor*, 125 N.J. 567 (1991), the Court determined that satisfaction of Prong C of the ABC Test is the most important indication of whether an individual is an employee for purposes of the Unemployment Compensation Law. Prong C requires that the individuals in question be customarily engaged in an independently established trade, occupation, profession or business. To meet this requirement, individuals must meet the dual test for establishing that the business they purport to be in was established independently of the employment relationship in question and they were engaged in that independently established activity at the time the services were rendered. *Gilchrist v. Division of Employment Security*, 32 N.J. Super. 147, 158 (App. Div. 1957). Furthermore, a finding that Prong C had been satisfied requires a clear, unequivocal conclusion that the requirements have been met. *Consumer's Research Inc. Evans*, 128 N.J.L. 95, 98 (Sup. Ct. 1942). Moreover, even if an individual passes muster as an independent contractor, pursuant to the ABC Test, that person must then prepare a certified payroll form listing the hours he or she worked on a given public works project site and the prevailing rate of pay applicable to the work in question. The latter, in turn, is then submitted to the public body for whom the construction work was performed. Therefore, an independent contractor, like any other contractor or subcontractor who performs any work activity on a public works project, must be registered pursuant to the Public Works Contractor Registration Act. It must be remembered that the latter is legislatively linked to the Prevailing Wage Act, all the tenets of which apply to all contractors and subcontractors alike who engage in public work activities.

In that regard, the commenters noted that prime contractors should not be deemed to be liable for the failure of lower tier subcontractors to register as per the requirements of the Public Works Contractor Registration Act. N.J.S.A. 34:11-56.50 defines a contractor as ". . . a person, partnership, association, joint stock company, trust, corporation or other legal business entity or successor thereof who enters into a contract which is subject to the provisions of the 'New Jersey Prevailing Wage Act' . . . and includes any subcontractor or lower tier subcontractor of a contractor as defined herein." Moreover, N.J.S.A. 34:11-56.51 provides, in pertinent part, that ". . . [n]o contractor or subcontractor, including a subcontractor not listed in the bid

proposal, shall engage in the performance of any public work subject to the contract, unless the contractor or subcontractor is registered pursuant to that act." Also, N.J.S.A. 34:11-56.55 states that "[e]ach contractor shall, after the bid is made and prior to the awarding of the contract, submit to the public entity the certificates of registration for all the subcontractors listed in the bid proposal. Applications for registration shall not be accepted as a substitute for a certificate of registration for the purposes of this section."

The aforecited provisions made it abundantly clear that the prime contractor is indeed responsible for all those contractors who perform public work in order to fulfill the latter's contractual obligations. To sever the chain of responsibility by attenuating the link between the prime contractor and lower tier subcontractors would be a defeat for the purposes for which the Prevailing Wage and Public Works Contractor Registration Acts were enacted by the Legislature. Those purposes are embodied in N.J.S.A. 34:11-56.49 and are as follows:

"The Legislature finds and declares that:

- a. There is growing concern over the increasing number of construction industry workers on public works projects laboring under conditions which violate State labor laws and regulations concerning wages, unemployment and temporary disability insurance, workers' compensation insurance, and the payment of payroll taxes;
- b. Contractors and subcontractors receiving the benefit of public tax dollars for their work should not be allowed to exploit their workers by denying them benefits and pay mandated by law;
- c. It is therefore necessary and proper for the Legislature to establish a registration system for contractors and subcontractors engaged in public works projects in order to better enforce existing labor laws and regulations in the public works industry."

In light thereof, the Department is of the opinion that its proposed amendments are a reasonable response to its legislative mandate.

Additionally, Mr. Forman expressed his belief that the proposed amendments would pose an economic hardship to the members of the New Jersey Asphalt Pavement Association; specifically, he claims that if owner-operators of trucks must register pursuant to the Public Works Contractor Registration Act, an "acute shortage of haulers to work on public work jobs . . ." would ensue ". . . as many owner-operators would quickly refuse to register and, instead, seek hauling opportunities on non-public work jobs, which are currently plentiful." The Department, while sympathetic to the aforecited concerns, notes that the intent of the Prevailing Wage Act and the Public Works Contractor Registration Act is to help make level the competitive playing field for all those who would work on public works projects. That goal cannot be accomplished by requiring some categories of truckers to adhere to the requirement of registration while allowing another to avoid doing so. The cost of registration, \$300.00, is minimal and should not prove to be a hardship. The fear of an acute shortage of haulers is more a reflection of the disparity in pay between owner-operators and trucking employees of contractors than a registration issue since the former have financial considerations that put them at a competitive disadvantage to the latter. Were the profit margins of the two aforementioned categories to be more competitive, the laws of supply and demand would obviate any concerns with regard to a shortage of haulers.

Furthermore, several of the commenters advanced the argument that the removal of materials from a construction site, such as millings, that is, the residue from a road which has been scoured prior to paving, are not covered under the Prevailing Wage Act and thus, those who remove them do not have to be registered under the Public Works Contractor Registration Act. In response thereto, cognizance must be taken of the fact that in the case of *Horn v.*

Serritella Brothers, Inc., 190 N.J. Super. 280, 283 (App. Div. 1983), the Appellate Division noted, that the Prevailing Wage Act is remedial in nature and, therefore, ". . . is entitled to liberal construction and application in order to effectuate the strong public policy of protecting those whose labor goes into public projects." In that regard, the Court concluded that drivers who remove debris away from a public works construction site to a dump site are not "material suppliers," a category of workers who are exempted from the terms of the Prevailing Wage Act; rather they are workers who render services directly upon a public work. Since the latter category is, in fact, covered under the terms of the Prevailing Wage Act, it stands to reason that those individuals must be registered pursuant to the Public Works Contractor Registration Act in order to haul debris from a public work site. Id.

N.J.A.C. 12:62-1 sets forth general provisions which apply to Chapter 62, including the application and scope of the chapter, and definitions of terms used within the chapter. It also explains that the Division of Wage and Hour Compliance, within the Department of Labor and Workforce Development, shall administer and enforce the chapter and includes a statement regarding the severability of the provisions of the chapter.

N.J.A.C. 12:62-2 explains that no contractor, as that term is defined in the Act, shall bid on or engage in any contracts for public work unless he or she is registered pursuant to the Act and sets forth the procedure for public works contractor registration. It also explains the process by which contractors bidding or engaging in public work must apply for a certificate of registration. It sets forth the method by which the Department of Labor and Workforce Development shall issue certificates of registration, the term of that registration, and penalties for violations of the Act, including the denial of an application for a certificate of registration and/or the suspension or revocation of such a certificate. In addition, the subchapter sets forth the process by which aggrieved parties may appeal determinations which adversely affect their status as registered public works contractors.

Having responded to the commenters, the Department has determined that the hitherto proposed amendments as written will presently be incorporated into the proposed rule readoption. In addition thereto, the Department proposes to amend N.J.A.C. 12:62-1.1, 1.2, 1.3, 2.1(b), 2.6(b)1 and 2.6(f) to reflect the Department's name change from the Department of Labor to the Department of Labor and Workforce Development.

N.J.A.C. 12:62-1.2, Definitions, is being amended to include a definition of "custom fabrication" which shall mean ". . . the fabrication of plumbing, heating, cooling, ventilation or exhaust duct systems and mechanical insulation." Moreover, the definition of a "subcontractor," which presently means any subcontractor or lower tier subcontractor of a contractor, is being amended to include ". . . owner operators or independent contractors."

The definition of "worker" is being amended to note that for the purpose of these rules, contractors or subcontractors engaged in custom fabrication shall not be regarded as material suppliers. This amendment comports with the legislative amendment to N.J.S.A. 34:11-56.26 which extends the ambit of the Prevailing Wage Act to off-site custom fabrication sites.

N.J.A.C. 12:62-2.1(a)1, which pertains to registration requirements, is being amended to indicate that no contractor shall list a subcontractor, "including a contractor/subcontractor who is involved in off-site custom fabrication, as defined in N.J.S.A. 34:11-56.26" in a bid proposal for a public works contract unless the subcontractor is registered pursuant to the Act. This proposed amendment comports with the intent of the Act and the New Jersey Prevailing Wage Act; in particular with the recent amendment to the latter statute at N.J.S.A. 34:11-56.26 which has extended the reach thereof to off-site custom fabrication work.

N.J.A.C. 12:62-2.1(c)6, which requires that an applicant for a

contractor registration certificate shall provide a history of previous and/or current labor law violations and the final dispositions thereof, is being amended to include "any violations, or pending violations, brought by a governmental entity of criminal or civil statutes and/or regulations which would reflect upon the fitness of the applicant/contractor to bid on or engage in public work projects." The proposed amendment is synchronous with the Department's determination to make certain that only law-abiding individuals participate in public work projects and thereby receive financial remuneration from public funds.

N.J.A.C. 12:62-2.1(d) presently permits a contractor, upon completion of two consecutive years of registration, to then elect to register for a two-year period. The rule is being amended to permit the latter election only if the applicant has not violated the Act and/or Prevailing Wage Act or these rules during the period of licensure preceding submission of the renewal application.

N.J.A.C. 12:62-2.2(b) is being amended so that the subsection will now indicate that an initial contractor registration certificate shall be valid for only one year.

N.J.A.C. 12:62-2.2(c) is being amended by the addition of a proviso that renewal of a contractor registration certificate shall be predicated upon a contractor not having knowingly or willfully violated the Public Works Contractor Registration Act or the New Jersey Prevailing Wage Act in the year of licensure preceding the filing of a renewal application.

N.J.A.C. 12:62-2.4(a)3 permits the Department to deny an application for a contractor registration certificate or to suspend or revoke a certificate if he or she willfully made a misstatement of material fact in the initial or renewal application. The Department proposes to amend the rule so that omission of a material fact or facts could also result in a denial, suspension or revocation of a contractor registration certificate. The foregoing amendment is being proposed to close a perceived loophole in the contractor registration process.

N.J.A.C. 12:62-2.4(a)5 is being amended to indicate that not only can a contractor registration certificate be denied, revoked or suspended if a contractor had contracted for use in the completion of a public work any unregistered subcontractor or independent contractor, but the latter results could ensue if the contractor ". . . has utilized a subcontractor who has subcontracted his or her work to any subcontractor or independent contractor who is not so registered."

Similarly, N.J.A.C. 12:62-2.4(a)6, a newly proposed paragraph, will provide that denial, suspension or revocation may occur if the applicant or registration holder had failed to respond to a departmental request to produce records, forms or documents, or failed to cooperate or has interfered with a designee of the Commissioner in the course of a departmental investigation. Once again, the proposed amendment is designed to ensure that those contractors who do not adhere to the letter and intent of the Act are not permitted to profit from the public largesse associated with participation in a public work project.

In that vein, N.J.A.C. 12:62-2.4(b) is being amended to indicate that a registration certificate may be denied, revoked or suspended if the applicant, registrant, or an officer, partner, director, stockholder or agent of the registrant or applicant has violated any provision of the Act or of these rules "and/or any violations, or pending violations, brought by a governmental entity of criminal or civil statutes and/or regulations which would reflect upon the fitness of the applicant/contractor to bid on or engage in public work projects."

N.J.A.C. 12:62-2.4(c) presently provides that the registration of a contractor shall not be revoked or suspended for a period of more than five

years. The Department proposes to set forth standards which will be utilized in determining the length of time for which a contractor's registration may be denied, suspended or revoked. Thus, the new N.J.A.C. 12:62-2.4(c)1 provides that the record of previous violations by the contractor of the Act and/or the Prevailing Wage Act and any violations, or pending violations, brought by a governmental entity of criminal or civil statutes and/or regulations which would reflect upon the fitness of the applicant/contractor to bid on or engage in public work projects will be taken into account in determining the length of time of said denial, suspension or revocation. Another new factor to be considered is set forth in the proposed N.J.A.C. 12:62-2.4(c)2. That factor is whether the contractor or subcontractor should reasonably have known that a subcontractor with whom he or she is in privity, had not registered pursuant to the Act or had had his or her registration revoked or suspended or had allowed it to lapse. Also, the newly proposed N.J.A.C. 12:62-2.4(c)3 permits the Commissioner to consider the total number of unregistered subcontractors at the public work site(s) in question and the size and scope of the public work project(s). Lastly, the newly proposed N.J.A.C. 12:62-2.4(c)4 will also permit the Commissioner to consider whether the contractor or subcontractor in privity to the unregistered subcontractor obeyed the Department's directive to remove the latter from the public work site and thereby cure the violation of the Act.

N.J.A.C. 12:62-2.6(a), (d) and (e), which presently pertain to the process for appealing a suspension or revocation of a contractor registration certificate, are being amended to include those instances where registration is denied.

N.J.A.C. 12:62-2.6(b)1, which sets forth the address to which appeals from a denial, suspension or revocation of a contractor registration certificate should be directed, is being amended to reflect an address change to the New Jersey Department of Labor and Workforce Development, Division of Wage and Hour Compliance, P.O. Box 389, 3rd Floor, Trenton, New Jersey 08625-0389.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments will have a positive social impact in that they will permit the Department to more effectively enforce the Public Works Contractor Registration Act. By further clarifying the bases upon which a contractor may be denied a registration certificate renewal or may have the certificate suspended or revoked, as well as elucidating the criteria to be considered in the imposition of a term of suspension or revocation, the Department will be in a better position to protect the best interests of workers, contractors and public bodies engaged in public works. Since there are vast sums of money being expended on public works construction projects in this State, particularly in light of the Educational Facilities Construction and Financing Act, P.L. 2000, c.72, N.J.S.A. 18A:7G-1 et seq., to which eight billion dollars have been committed, there thus exists a further compelling impetus to make certain that only those contractors and subcontractors who abide by all of the labor laws of this State, including the Public Works Contractor Registration Act, benefit thereby. Additionally, inherent in a thorough and carefully delineated enforcement of the Act by the Department, is the assurance that contractors and subcontractors who engage in public works projects are qualified to do so. Included in that assurance is the maintenance of a safe work environment for all those who labor on public works projects, as well as a guarantee that those for whom they labor are law-abiding contractors and subcontractors who will, quite literally, pay them their due. Moreover, the proposed amendments will also ensure that the responsibilities of those contractors and subcontractors who benefit from the State's largesse by engaging in public work construction projects will not be attenuated. Rather,

responsibility to adhere to the tenets of the Act and its attendant rules is an on-going one that flows from contractor to subcontractor to independent contractor for to do otherwise, would run counter to the very purposes of the New Jersey Public Works Contractor Registration Act.

Economic Impact

The rules proposed for readoption with amendments will have no economic impact beyond that which results from the Department's existing enforcement of the Act and rules promulgated in accordance therewith at N.J.A.C. 12:62. Those rules, including the proposed amendments, are intended to better equip the Department to enforce the labor laws and ensure that disreputable public works contractors who violate those laws do not receive the benefit of public tax dollars. To the extent that the Department's efforts in this regard result in an increase in expenses to those contractors not currently complying with the labor laws or those hitherto not registered pursuant to the Act, in the way of higher labor costs or lost business opportunities, the existing rules, including the proposed amendments, will have a negative impact upon those individuals. Likewise, if a contractor, subcontractor or independent contractor has his or her contractor registration certificate suspended or revoked or, in the first instance, is denied registration, then obviously the economic impact will be severe since that person and business will not be permitted to participate in public work construction or renovation activities. However, adherence to the tenets of the Act and these rules will obviate the risk of economic loss and will produce a positive economic impact.

Federal Standards Statement

The rules proposed for readoption with amendments do not exceed standards or requirements imposed by Federal law as there are currently no Federal standards or requirements applicable to the subject matter of this rulemaking. The proposed amendments enable the Department to implement the provisions of the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq. As a result, a Federal standards analysis is not required.

Jobs Impact

There will be no anticipated increase or decrease in jobs as a result of the rules proposed for readoption with amendments.

Agriculture Industry Impact

The rules proposed for readoption with amendments will not have any impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed readoption with amendments require that all public works contractors, including those which are small businesses, as that term is defined within the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., provide on an annual basis the information requested in the "New Jersey Department of Labor and Workforce Development Application for Public Works Contractor Registration" as well as any supplemental information or documentation requested by the Department. Payment of a registration fee, at least annually, is required. This reporting requirement is dictated by the provisions of P.L. 1999, c.238, and is vital to the success of the public works contractor registration program, the objectives of which are stated above. Again, to the extent that the proposed readoption with amendments will better equip the Department to enforce State labor laws, both large and small public works contractors will be equally affected.

Smart Growth Impact

The Department does not anticipate that the rules proposed for readoption with amendments will have any impact on smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:62.

Full text of the amendments follows :

SUBCHAPTER 1. GENERAL PROVISIONS

<< NJ ADC 12:62-1.1 >>

12:62-1.1 Application and scope

(a) The rules in this chapter are promulgated by the Department of Labor <<+ and Workforce Development+>> in order to implement "The Public Works Contractor Registration Act," P.L. 1999, c.238 (N.J.S.A. 34:11-56.48 et seq.). The Act establishes a unified procedure for the registration of contractors and subcontractors engaged in public works project.

(b) (No change.)

<< NJ ADC 12:62-1.2 >>

12:62-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

"Commissioner" means the Commissioner of Labor <<+and Workforce Development+>> or his or her duly authorized representatives.

...

<<+"Custom fabrication" means the fabrication of plumbing, heating, cooling, ventilation or exhaust duct systems and mechanical insulation.+>>

"Department" means the Department of Labor <<+and Workforce Development+>>.

...

"Subcontractor" means any subcontractor or lower tier subcontractor of a contractor<<+, including owner operators or independent contractors+>>.

"Worker" includes a laborer, mechanic, skilled or semi-skilled laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site. <<+For the purposes of these rules, contractors or subcontractors engaged in custom fabrication shall not be regarded as material suppliers.+>>

<< NJ ADC 12:62-1.3 >>

12:62-1.3 Administration and enforcement

The Division of Wage and Hour Compliance, within the Department of Labor <<+ and Workforce Development+>>, shall administer and enforce this chapter. All the powers, duties and responsibilities vested in the Commissioner by the Public Works Contractor Registration Act are hereby delegated to and vested in the Director of the Division of Wage and Hour Compliance, except the power to adopt, amend or repeal rules and the power to make final determinations resulting from any of the hearings required or permitted to be held pursuant to the Act or the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

SUBCHAPTER 2. PUBLIC WORKS CONTRACTOR REGISTRATION

<< NJ ADC 12:62-2.1 >>

12:62-2.1 Registration required

(a) No contractor shall bid on any contract for public work unless the contractor is registered pursuant to the Act. In addition:

1. No contractor shall list a subcontractor<<+, including a contractor/subcontractor who is involved in off-site custom fabrication, as defined in N.J.S.A. 34:11-56.26,+>> in a bid proposal for a public works contract unless the subcontractor as required is registered pursuant to the terms of N.J.S.A. 34:11-56.48 et seq., the Public Works Contractor Registration Act, at the time the bid is submitted to the public entity; and

2. (No change.)

(b) Any contractor which seeks to register under the Act shall apply to the Division of Wage and Hour Compliance, within the Department of Labor <<+and Workforce Development+>>. For this purpose, the Department shall prepare a "New Jersey Department of Labor <<+and Workforce Development+>> Application for Public Works Contractor Registration." This form shall be available from the Department.

(c) As part of its application to the Department, a contractor shall provide all required information and documents requested by the Application for Public Works Contractor Registration. The information to be submitted for review shall include:

1.-5. (No change.)

6. A history of previous and/or current labor law violations and the final dispositions of such violations <<+and any violations, or pending violations, brought by a governmental entity of criminal or civil statutes and/or regulations which would reflect upon the fitness of the applicant/contractor to bid on or engage in public work projects+>>;

7.-8. (No change.)

(d) The contractor shall pay an initial, non-refundable, annual registration fee of \$300.00 to the Commissioner. The non-refundable fee for the second annual registration shall be \$300.00. Upon successful completion of two consecutive years of registration, a contractor may elect to register for a two-year period and pay a non-refundable registration fee of \$500.00. <<+ However, a two-year registration will only be granted if the applicant has not violated the Act and/or the Prevailing Wage Act or these rules during the period of licensure preceding submission of the renewal application.+>>

(e)-(g) (No change.)

<< NJ ADC 12:62-2.2 >>

12:62-2.2 Issuance and term of a certificate of registration

(a) (No change.)

(b) <<-A->> <<+An initial+>> certificate of registration shall be valid <<+only+>> for a period of one calendar year from the date of registration.

(c) Registration shall be renewed not less than 30 calendar days prior to the expiration date of the immediately preceding registration. <<+However, renewal shall be predicated upon the contractor not having knowingly or willfully violated the provisions of the Act or of the New Jersey Prevailing Wage Act during the period of licensure preceding the renewal application.+>>

(d)-(f) (No change.)

<< NJ ADC 12:62-2.4 >>

12:62-2.4 Denial, suspension or revocation of registration

(a) As an alternative to or in addition to sanctions provided in N.J.A.C. 12:62-2.5, a certificate of registration may be denied, suspended or revoked if the registrant or applicant or an officer, partner, director, stockholder, or agent of the applicant or registrant has at any time:

1.-2. (No change.)

3. Willfully made a misstatement of <<+or omitted revealing a+>> material fact <<+or facts+>> in the application for registration or renewal;

4. Failed to provide all information requested by the Department pursuant to N.J.A.C. 12:62-2.1(c); <<-or->>

5. Contracted for use in the completion of a public work any subcontractor or independent contractor required to register under the Act who is not so registered <<+or has utilized a subcontractor who has subcontracted his or her work to any subcontractor or independent contractor who is not so registered+>><<-.->><<+; or+>>

<<+6. Failed to respond to a request to produce records, forms or documents or failed to cooperate or has interfered with a designee of the Commissioner in the course of a departmental investigation.+>>

(b) A certificate of registration may be denied, revoked, or suspended, depending on the nature and severity of the violation, if the applicant or registrant, or an officer, partner, director, stockholder or agent of the applicant or registrant has at any time violated any provision of the Act or of this chapter, <<+and/or any violations, or pending violations, brought by a governmental entity of criminal or civil statutes and/or regulations which would reflect upon the fitness of the applicant/contractor to bid on or engage in public work projects+>> or has failed to comply with the labor laws of New Jersey or any other state or Federal labor law or any order of the Commissioner with regard to any matter not referred to in (a) above.

(c) The registration of a contractor shall not be revoked or suspended for a period beyond five years. <<+However, in determining the length of time for which a contractor's registration may be denied, suspended or revoked, the following criteria shall be considered:+>>

<<+1. The record of previous violations by the contractor of the Public Works Contractor Registration Act and/or the New Jersey Prevailing Wage Act and any violations, or pending violations, brought by a governmental entity of criminal or civil statutes and/or regulations which would reflect upon the fitness of the applicant/contractor to bid on or engage in public work projects.+>>

<<+2. Whether the general contractor or subcontractor in question should reasonably have known that a subcontractor with whom he or she is in privity had not registered, pursuant to the Act or had his or her registration revoked or suspended or had let his or her registration lapse;+>>

<<+3. The total number of unregistered subcontractors at the work site(s) in question and the size and scope of public works project(s); and+>>

<<+4. Whether the general contractor or subcontractor in privity to the subcontractor who is not registered pursuant to the Act obeyed the Department's directive to remove the unregistered subcontractor from the work site and thus cure the violation of the Act.+>>

(d) (No change.)

<< NJ ADC 12:62-2.6 >>

12:62-2.6 Appeals

(a) Whenever the Department shall find cause to <<+deny,+>> suspend or revoke a certificate of registration, to require the posting of a surety bond pursuant to N.J.A.C. 12:62-2.4(d), or to impose an administrative penalty pursuant to N.J.A.C. 12:62-2.5, it shall notify the registrant or applicant of the reasons therefor, in writing, and provide opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) All requests for hearing shall be filed within 10 business days from the date of receipt of the notice. The Commissioner or his or her designee shall issue the final decision in accordance with the applicable provisions of the Administrative Procedure Act and the Uniform Administrative Procedure Rules.

1. All requests for hearing shall in writing and shall be directed to the following address:

<<+NJ Department of Labor and Workforce Development+>>

Division of Wage and Hour Compliance

<<-225 E. State Street->>

PO Box 389

<<+3rd Floor+>>

Trenton, NJ 08625-0389

(c) (No change.)

(d) Where the Department has notified a registrant that it has found cause to <<+deny,+>> suspend or revoke its certificate of registration and where further, that registrant has failed to request a hearing within the 10-day time limit prescribed in (b) above, the registrant shall, within 20 days of having received notice of the <<+denial,+>> revocation or suspension, surrender its certificate of registration by way of certified mail to the address listed at (b)1 above.

(e) Any contractor who has his or her registration <<+denied,+>> suspended or revoked for violations enumerated in this subchapter shall not be permitted to perform work for which a bid has been submitted and which is under review.

(f) Where a hearing with regard to a <<+denial,+>> suspension or revocation of a certificate of registration is requested and where, further, the Commissioner of Labor <<+and Workforce Development+>> ultimately determines that cause has been established to <<+deny,+>> suspend or revoke the certificate of registration, the registrant shall, within 10 days of receipt of the final order of the Commissioner or his or her designee, surrender the certificate of registration, by way of certified mail to the address listed at (b)1 above.

(g) (No change.)

37 N.J.R. 1674(a)
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